

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,	.
	.
Plaintiff,	.
	. Case No. 21-mj-12036
vs.	.
	. Newark, New Jersey
MOHUMMAD SIMMONS,	. February 3, 2021
	.
Defendant.	.
	.

TRANSCRIPT OF BAIL HEARING
BEFORE THE HONORABLE EDWARD S. KIEL
UNITED STATES MAGISTRATE JUDGE

APPEARANCES (the parties appeared via Zoom videoconference):

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1 (Commencement of proceedings)

2

3 THE COURT: We're on the record in the matter of
4 United States of America versus Mohummad Simmons. It's Case
5 Number 20-12036 [sic].

6 If we could have appearance on behalf of the
7 Government, please.

8 MS. LATZER: Good afternoon, Judge. Desiree Grace
9 Latzer, Assistant United States Attorney, for the Government.

10 THE COURT: Okay.

11 And on behalf of the defendant.

12 MR. SHARMA: Good afternoon, Your Honor. Rahul
13 Sharma on behalf of Mr. Simmons.

14 THE COURT: Okay.

15 Mr. Simmons, you can hear and see me?

16 Just nod your head if you can.

17 Okay. If any time you cannot hear or see me,
18 please raise your hand or give us a signal, because I want to
19 make sure you can hear and see everything that's going on
20 today.

21 Okay?

22 Okay. Do you also consent to this proceeding being
23 conducted by video conference today?

24 Just nod your head "yes," sir.

25 Okay. Why don't you take yourself off of mute?

1 Looked like you didn't quite hear me.

2 MR. SHARMA: It's quite loud over there,
3 Your Honor.

4 THE COURT: I know.

5 All right. There -- because there should be a
6 button for you to push to unmute yourself, sir.

7 THE COURT OFFICER: Mr. Simmons, there should be a
8 button to unmute yourself on the screen.

9 THE COURT: Okay. Very good.

10 THE DEFENDANT: Can you hear me?

11 THE COURT: Mr. Simmons, when I asked you, whether
12 consented to --

13 THE DEFENDANT: You can hear me?

14 THE COURT: -- by video conference, I didn't get an
15 answer from you.

16 Do you consent?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. Very good.

19 All right. I'm going to review -- and if you want
20 to speak to Mr. Sharma at some point --

21 All right. Anthony, if you could put him on mute
22 as well.

23 Thank you.

24 All right. We're here for a bail application. And
25 I understand that at the initial appearance last week or a

1 couple of weeks ago, that Mr. Simmons consented to detention
2 without prejudice to making a bail application. The bail
3 application has been made.

4 It's my understanding that defendant is proposing
5 that Ms. Tatiana Lee [phonetic] be a third-party custodian.
6 He'd be released to his custody -- to her custody. Pretrial
7 Services has deemed her an appropriate candidate to serve as
8 a third-party custodian. And I presume everybody has
9 received the updated report from Pretrial Services.

10 So Pretrial Services has made their recommendation.

11 So I'll guess I'll hear first from the Government.

12 Ms. Latzer?

13 MS. LATZER: Thank you, Judge. I mean, just
14 reserving the right to respond after Mr. Sharma makes his
15 arguments, since it's his motion.

16 The Government's seeking detention here --

17 THE COURT: All right. I should ask Mr. Sharma
18 that. That is true, and I --

19 But go ahead, since you have the floor.

20 MS. LATZER: Thank you, Judge.

21 The Government's seeking detention here for a
22 number of reasons, probably the most telling of which is that
23 Mr. Simmons was arrested on some of the burglaries or one of
24 the burglaries that pertain to this conspiracy and was
25 released on conditions in the state court. He then continued

1 to commit a slew of additional pharmacy burglaries, this
2 exact same conduct for which he had already been arrested
3 while under conditions of a state court.

4 He was also placed on home detention from that
5 state court judge. And that when we went to arrest him for
6 this federal warrant, he was hanging out on a street corner
7 in Jersey City with other known felons that at least the
8 Government is well familiar with and ignoring all of the
9 conditions that he had previously been placed on.

10 And that really is just the most recent example of
11 a 10-year uninterrupted slew of Mr. Simmons ignoring
12 court-ordered conditions. I don't typically place a lot of
13 emphasis on juvenile conduct, but because of the fact that it
14 really was the beginning of an impressive -- an impressive
15 stretch of ignoring court orders, I'll just outline it
16 briefly.

17 Starting in 2010, when he was 14 years old, he was
18 arrested in -- I'm sorry -- he was sentenced in February of
19 2010 for two different arrests, one of which obviously
20 occurred while he was on pretrial release, and he was
21 sentenced to one-year probation at that time.

22 Two months into his probationary term, he was
23 arrested with a gun. Three months after that, while now on
24 probation and pretrial release, he was arrested again. In
25 September 2010, he was sentenced to two years' probation for

1 those two arrests. And nine months into that probationary
2 period, he's arrested with controlled dangerous substances.
3 Two months after that, again, on probation and pretrial
4 release, he's arrested with another gun.

5 And his adult conduct is exactly the same.
6 Starting in September 2013, he's arrested for distribution of
7 controlled substances. A couple of months later while on
8 pretrial release, he's arrested distributing narcotics. Six
9 months after that, again on pretrial release, now for two
10 pending causes, he's arrested distributing narcotics. That
11 resulted in a bench warrant. For those three offenses, he
12 pled guilty in October of 2014 to distribution of narcotics
13 on two of them and possession on one. And he was placed on a
14 two-year probationary period.

15 During that probationary period, he accumulated
16 one, two, three, four -- four different arrests, I believe,
17 all of which had to do with controlled substances, the
18 distribution of controlled substances.

19 Eventually, this results in a violation of
20 probation, a violation of probation, held without bail with
21 new charges. His probation ultimately is revoked, obviously,
22 because he couldn't comply. And he's finally sentenced to
23 five years' confinement in July of 2017.

24 That is the only period of time in his entire life,
25 since he was 14 years old that he refrained from getting

1 arrested.

2 After he was released from that term of
3 imprisonment, he almost immediately resumed his criminal
4 career, again, with controlled dangerous substances. He's
5 arrested in November of 2020 on one of the pharmacy
6 burglaries that pertain to this conspiracy.

7 And I should also note for Your Honor, that this
8 conspiracy is obviously expansive. The Court knows that from
9 the complaint. But Mr. Simmons is a leader of this
10 conspiracy.

11 So he's arrested. He is placed on conditions from
12 a state court judge, which, honestly, is surprising to me, at
13 least looking at his record, given that he's demonstrated an
14 inability to comply with anything. But he is released, and
15 he's given an opportunity to comply. And, again, he fails to
16 do that. So he has committed additional crimes in addition
17 to ignoring the terms.

18 I would note for Your Honor that that was in
19 November. He was incarcerated for a short period of time
20 while that was -- what's the -- while that was pending. So
21 he's arrested for a new pharmacy burglary on December 7th.
22 And he's -- pretrial was denied on December 18th. Let's see.
23 I think he was actually released -- sorry. He was released
24 on December 18th. And one of the conditions there,
25 Your Honor, that he be on home detention.

1 And the next day, on Saturday, December 19th, he
2 went to Virginia. So he's on December 18th released from
3 custody, on home detention in Jersey City, not permitted to
4 leave, and the next day he goes to Virginia.

5 December 20th, he's in Atlanta, Georgia. And he
6 comes back then on December -- at some point between
7 December 20th and December 23rd, he comes back, because on
8 December 23rd, he actually goes to the -- I believe it was
9 the Secaucus Police Department to recover his personal
10 property. And later that day, he's actually observed with --
11 I believe it was Rico Phang -- or -- I'm sorry -- Deon Davis.
12 He's observed with Deon Davis on December 23rd. And one of
13 the -- another condition of his pretrial release is is that
14 he not have any contact with his co-defendants Rico Phang and
15 Deon Davis, so he literally goes to the Secaucus police
16 station and leaves with his co-defendant that he's not
17 allowed to have any contact with.

18 So whether the conditions are serious, like don't
19 commit another state or federal crime, or whether they're
20 routine -- stay on home detention where you're confined to or
21 don't have contact with your co-defendants -- he literally
22 cannot comply with any of them. And it's for those reasons,
23 that the Government believes that he is a danger to the
24 community and a flight risk. There is a bench warrant in his
25 past, but there's really no reason at all to think that he

1 will comply with any conditions that this Court sets.

2 And lastly, Your Honor, I would just note that it's
3 my understanding that the -- the counties in which he has
4 pending cases, that they do intend to revoke his release in
5 the event that he's released on our case, because they too
6 share the concern that he will reoffend.

7 THE COURT: All right. Very good. Thank you very
8 much.

9 Mr. Sharma.

10 MR. SHARMA: Okay. First, Your Honor, just to
11 start with, what the prosecutor just said that the counties
12 intend to revoke his pretrial release, no, the prosecutors
13 intend to request revocation of his pretrial release. The
14 counties have not made that decision yet. And, in fact, when
15 the prosecutor --

16 MS. LATZER: Okay. I apologize for that. I didn't
17 intend to represent that I knew what the courts will do.

18 The prosecutors do intend to seek revocation.

19 MR. SHARMA: And when the prosecutors sought
20 revocation on December 18th, in Secaucus, the court denied
21 that petition.

22 Now, since December 18th, Your Honor, he has -- so
23 I did not know about these -- I did not know about these
24 trips, apparently to Atlanta. I don't know what -- I don't
25 have that information in front of me. Apparently the

1 | prosecutor has this information. I don't have it. So I
2 | can't respond to that.

3 | But what I can say is this. We are willing to, of
4 | course, concede that Mr. Simmons has not -- has not behaved
5 | properly on pretrial release in the past. And that is
6 | exactly why he is -- we are willing to agree to the most
7 | stringent restrictions on him, including location monitoring
8 | and home incarceration. We have Tatiana Lee as a bond
9 | co-signer and as a third-party custodian.

10 | Now, I think that we could also -- since he has
11 | had -- apparently had contact with certain defendants in the
12 | case, we could also impose a condition of no phone usage
13 | whatsoever by him. And we could even require Ms. Lee to
14 | submit phone records, if necessary, to the Court to show
15 | that -- to show that the only phone calls made from her
16 | residence are when she is there and they are her phone calls.

17 | Every single bit of Mr. Simmons' illegal activity
18 | while out on pretrial release has been outside the home.
19 | There is no allegation that he has maintained a residence to
20 | commit any crimes. There is no allegations that he's ever
21 | distributed drugs from a residence. There's no allegation --
22 | the prosecutor mentioned a couple of times gun charges.
23 | Those are from 20- -- the last time he faced a gun charge was
24 | 2013. In the last eight years, he has never faced a gun
25 | charge.

1 The instant offense is for burglaries. And the
2 burglaries at issue here did not involve a weapon. And this
3 is not a presumption case, Your Honor. Okay? So given that
4 it's not a presumption case, the Government, to find that he
5 is a danger to the community, they're -- the Court must find
6 that by clear and convincing evidence, by clear and
7 convincing evidence, there is no combination of conditions
8 that can reasonably assure the Court that -- I'm sorry?

9 THE COURT: Let me just throw something out at you.

10 I understand that these are burglaries and there
11 wasn't violence or guns or anything involved.

12 But the problem with burglaries is that they can
13 lead into very unfortunate circumstances. When you break
14 into somebody's business or you break into somebody's
15 residence, that that comes with it a very inherent danger of
16 a very troubling situation that could happen. Right?

17 MR. SHARMA: Certainly, Your Honor. And so, look,
18 I think the Government pretty much says that their primary
19 concern is danger to the community. His last bench warrant
20 was 2015. Since then he has had no bench warrant; so in the
21 last six years.

22 I understand the Government reserves its right to
23 argue risk of flight, but I think their primary concern is
24 pretty clearly danger to the community.

25 Under home incarceration with location monitoring,

1 | this Court can impose basically a "one strike and you're out"
2 | rule in this case. And this is exactly the kind of person
3 | who home incarceration was -- who home incarceration is
4 | perfect for, because --

5 | THE COURT: He was already on home incarceration
6 | under the state -- under the state charges back in December
7 | of 2020. As I understand it, when his pretrial detention was
8 | denied, he was released on Level 3 and my report indicates
9 | that that was 24-hour home confinement. And what I have from
10 | the complaint is that -- or what I have a proffer from the
11 | Government is that he doesn't care whether that's a condition
12 | in any event. I mean, how am I supposed to be confident in a
13 | person that gets the most -- most stringent and most
14 | restrictive conditions from a state court and flaunts it and
15 | doesn't care whether he violates that? How am I going to be
16 | assured that placing a bracelet on him is going to change
17 | anything?

18 | MR. SHARMA: Because I do think that changes
19 | things, Your Honor. He will be on a bracelet, and so he will
20 | know that one strike and he's out.

21 | And I do want to say that there's no allegation
22 | that he's ever done any criminal activity from home. He will
23 | be confined to the house 24/7 on a location monitoring
24 | bracelet. He goes outside the front door, he is out. You
25 | will not hear me at a follow-up hearing. If that happens,

1 which I don't expect it to because I think he understands
2 that this is now the feds, this will be a bracelet, he will
3 be monitored. He will basically have a GPS bracelet on him
4 that will be able to detect as soon as he leaves the house.
5 I -- there will be no argument from us, absolutely none
6 that -- for keeping him out if he leaves the front door
7 without permission. And as soon as that happens, Officer
8 Austin [phonetic] can file a violation petition.

9 And I just want to reiterate that there's no
10 allegation of him ever committing a crime inside the home.
11 There's no allegation of him conducting any sort of criminal
12 activity inside the home. And under United States v. Himler,
13 Your Honor, 797 F.2d 156, pincite 160, the Third Circuit said
14 that a danger to the community determination can only be
15 based on a finding that the defendant will commit one or more
16 of the crimes actually specified by the bail statute. So
17 while burglary is absolutely a serious crime, Your Honor, and
18 we don't deny that and that will be dealt with at sentencing
19 in this case, it is not a crime specified by the bail
20 statute. It is not a presumption offense. And, therefore,
21 it is not the risk of him committing burglaries or the fact
22 that he did commit burglaries is not a valid basis for
23 finding him to be danger to the community.

24 Now, if the Court found that he -- that there is --
25 that there's no combination of conditions that can reasonably

1 assure that Mr. Simmons will not deal narcotics from home,
2 that would be another -- that would be a crime specified by
3 the bail statute.

4 But notably, in Mr. Simmons' entire career, I do
5 not know of any single instance where he is alleged to have
6 dealt drugs from his home, where his home has ever been a
7 home base for any criminal activity. Therefore, since he is
8 not a risk of flight and the danger to the community
9 determination -- the danger to the community of him
10 committing a burglary can only be -- can only be used in
11 setting conditions of release, it cannot be a basis for
12 detaining him under Himler, Your Honor.

13 And as this Court reiterated in 2016, a decision by
14 Judge Linares, United States v. Akinola where Judge Linares
15 said, having reviewed Himler, the Court agrees with the
16 defendant that only the crimes identified in § 3142 of the
17 Bail Reform Act would support a finding by the Court that the
18 defendant poses a danger to the community.

19 THE COURT: Okay. So that you're saying that under
20 the case law, that an order to detain him, that there has to
21 be a finding that he is a person that would commit one of the
22 crimes that's listed under the rebuttal presumption provision
23 of the statute. Right?

24 MR. SHARMA: Correct, Your Honor.

25 THE COURT: Is that what you're saying?

1 Okay.

2 All right. Anything further?

3 MR. SHARMA: Your Honor, I respectfully ask the
4 Court to -- if it so pleases, Tatiana Lee is on the phone on
5 her mother's phone and to hear from Ms. Lee about her
6 willingness to co-sign the bond and to serve as a third-party
7 custodian, not to, you know, tug the Court's heart strings or
8 anything, but to show the Court that Mr. Simmons, he
9 understands at this point, he's in federal court. He's not
10 in state court. He would have a bracelet on. And that it
11 would be a "one strike you're out" policy, and that if -- and
12 that he would be putting his entire family in jeopardy if
13 that were to happen, especially because his wife needs to
14 work.

15 So I respectfully believe that the fact that
16 Ms. Lee works outside the home and requires child care from
17 Mr. Simmons would -- is a further reason to think that he
18 will not violate if he is braced on a bracelet and if there
19 is \$100,000 bond and a third-party custodian and any other
20 restrictive conditions that the Court believes are necessary.

21 THE COURT: I'll hear from her after I hear from
22 Ms. Latzer again.

23 I'm just -- you know, it -- it is amazing with the
24 technology, the things that you can do, and I appreciate you
25 giving me the pincite.

1 I'm looking at the Himler case, a Third Circuit
2 1986 case. And the beginning of it begins, "In this appeal
3 from a detention order entered by the district court, we must
4 consider whether, under the Bail Reform Act of 1984, an
5 accused taken into custody may be detained prior to trial
6 based on danger to the community where the detention hearing
7 was justified only by an alleged serious risk of flight."

8 And I haven't had a chance to review the rest of
9 the case, but that seems to be slightly different than what
10 you're saying.

11 But let me hear from Ms. Latzer.

12 MR. SHARMA: But at the pincite of 160, Your Honor,
13 the court says a danger to the community finding can only be
14 based on a finding that the defendant will commit one or more
15 of the crimes actually specified by the bail statute. If
16 Your Honor does "control-F" for the phrase "actually
17 specified by," you will find that quote.

18 MS. LATZER: Judge, I think I can, like, negate
19 this entire academic exercise, because there's more than
20 ample evidence in this investigation that Mr. Simmons wasn't
21 stealing these controlled substances for the fun of it. They
22 were dealing the promethazine with codeine in the streets of
23 Jersey City through one primary, currently uncharged
24 co-conspirator. And if Mr. Simmons would prefer that he also
25 be charged at this juncture with a possession with intent to

1 distribute those controlled substances, there's more than
2 probable cause to support that, and we could swear out an
3 amended complaint today.

4 And at that point, it would be a presumption of
5 detention case. But I can just proffer for the Court that
6 the investigation has revealed that evidence, that they were
7 distributing these narcotics. And it's the fact that
8 Mr. Simmons has never once complied with a condition of
9 release that gives everyone concern that, if given any
10 opportunity, any leeway, he's going to reoffend or be a
11 flight risk.

12 And the flight risk is also part of the Court's
13 analysis, because his history demonstrates an inability to
14 comply, whether those conditions are stay at home, don't
15 communicate with your co-defendants, show up to court, these
16 are all things that we have concerns about.

17 And I would also note for Your Honor that the state
18 court judge who denied the request that the prosecutors
19 request that his bail be revoked in December, I'm sure
20 thought at that point that he would take the judge 's warning
21 quite seriously. But I would note for Your Honor that the
22 vehicle that Mr. Simmons was arrested in on this charge was
23 used in two more pharmacy burglaries Hoboken, New Jersey,
24 days earlier. So he's -- he didn't even listen in December
25 of 2020 when he was told to stop committing additional

1 crimes.

2 And this reference to some sort of, like, one
3 strike and you're back, I'm not aware of where that is in the
4 Bail Reform Act because there's absolutely no requirement or
5 practical justification that a court would allow someone an
6 opportunity to commit a new crime before we apply the Bail
7 Reform Act which directs the courts to protect the community.

8 For those reasons and basically -- I really can't
9 emphasize enough, Your Honor, that he's been given at last 10
10 different directives from judges in his 10 -- the last 10
11 years of his life to comply with conditions, including don't
12 commit new offenses, and has not been able to do that once.
13 The Government would ask the Court to keep him detained.

14 THE COURT: Okay. Very good.

15 Well, go ahead, Mr. Sharma.

16 MR. SHARMA: Thank you, Your Honor.

17 I just want to say very briefly that the operative
18 term in what the AUSA just said is in the streets of Jersey
19 City. And so whatever illegal conduct Mr. Simmons is accused
20 of occurs outside the home. And so that is exactly why he
21 would be under home incarceration.

22 As for the idea of one strike and you're out being
23 a ridiculous concept under the Bail Reform Act, I am not
24 saying that he be given the opportunity to commit another
25 crime. The -- under § 3148 of the Bail Reform Act, the court

1 can revoke an order of release on a finding that -- not
2 simply on a find that the person poses a risk of flight or a
3 danger to the community, but on a -- but also on just a
4 finding that the person will not follow the condition of
5 release.

6 And so what I'm saying is that under 3148 that the
7 Court could very easily revoke as soon as there was any
8 indication, which I don't expect there to be in this case,
9 just as I did not expect in Moses Martinez's case and other
10 cases where clients of mine have gotten home incarceration,
11 because they understand that it's federal. They're on a
12 location monitoring bracelet, and there's concern -- there's
13 absolutely a valid concern about him not following the rules,
14 but I believe that conditions of release can reasonably
15 assure the Court -- not guaranteed, because nothing can
16 guarantee, and that's not the standard under the Bail Reform
17 Act -- can reasonably assure the Court home incarceration,
18 strict home incarceration with location monitoring, a bond,
19 and third-party custodian can reasonably assure the Court
20 that the -- that Mr. Simmons will appear for all of his --
21 will appear for all of his court appearances and will not
22 pose a danger to the community.

23 As for the -- as for the Government's threat of
24 bringing a charge under 21 U.S.C. for dealing promethazine
25 with codeine, dealing promethazine with codeine, that is a

1 Schedule V drug, Your Honor, and so dealing promethazine with
2 codeine would carry no more -- would carry a maximum sentence
3 of one year in prison, and so therefore it would not be a
4 presumption offense.

5 Once again --

6 THE COURT: --

7 MR. SHARMA: -- Your Honor.

8 THE COURT: Go ahead. I'm sorry.

9 MR. SHARMA: I just want to reiterate we are not
10 asking for -- we are not asking for him to be allowed back
11 out on streets. And he understands that this is far more
12 serious than it ever was in Essex County. And that is -- and
13 I understand the Court's unwillingness to say, well, why
14 should Pretrial Services babysit him, or why should this be
15 any sort of -- why should he get any sort of break here when
16 he has been so bad on state pretrial release? I respectfully
17 believe that that is because the standard is whether
18 conditions of release, a combination of conditions of release
19 can reasonably assure the safety of the community and his
20 appearance in court. And I believe that home incarceration
21 with location monitoring and a bond and a third-party
22 custodian and, if necessary, a strict court order of no use
23 of the phones while -- like unless Tatiana Lee is present and
24 not with the defendant, I think that is absolutely
25 appropriate here. But those conditions go to the

1 restrictiveness of the conditions, not the absence of any
2 combination that can reasonably assure those things.

3 THE COURT: All right. Well, I appreciate your
4 citation. If you heard the printer going behind me, I
5 printed out the case, and I'll be sure to make sure that I'll
6 read it. And I will do that.

7 All right. So thank you for the good arguments of
8 counsel. I appreciate it.

9 Mr. Sharma, I don't think it's necessary for
10 Ms. Lee to make a statement, but if you want to give her the
11 opportunity, I'm open to it. Do you want to still have her
12 make a statement?

13 MR. SHARMA: Yes, Your Honor, if possible.

14 THE COURT: Okay.

15 Ms. Lee, you can take yourself off mute, put
16 yourself on video, and I'll hear from you.

17 Ms. Lee, are you there?

18 MR. SHARMA: Ms. Lee, have we lost you?

19 THE COURT: She's there.

20 Ms. Lee, there's a button in front of you that pops
21 up that says -- asking you to unmute yourself?

22 MR. SHARMA: She might be busy with the kids,
23 Your Honor.

24 THE COURT: All right. Very good. All right.

25 MR. SHARMA: And it's fine. I don't want to -- oh,

1 she's at work. Okay.

2 THE COURT: We're running a little behind as well.

3 MR. SHARMA: Okay.

4 THE COURT: But that's not a reason not to give her
5 an opportunity. All right.

6 MR. SHARMA: I appreciate it, Your Honor, but she's
7 not available, so we'll just --

8 THE COURT: Very good.

9 Well, as I said, I've heard the argument of
10 counsel. I've seen the recommendation. I spoke to Pretrial
11 Services. And at this point, I think -- well, I conclude
12 that the Government has shown by at least preponderance of
13 the evidence that no condition or combination of conditions
14 will reasonably assure the defendant's appearance, as
15 required. The Government went through a long litany of -- a
16 very long criminal history of the defendant. I took that
17 into consideration. The weight of the evidence against the
18 defendant is strong. I've read the complaint. It looks like
19 he was on video -- videotape on many of the incidents that
20 happened. He has a very long criminal history.

21 And of particular importance to me was his
22 participation in criminal activity while on probation,
23 parole, and supervision. And I don't need to go through the
24 entire litany again. That was summarized by Ms. Latzer. It
25 is extensive. It is nonstop from the time that he's at a

1 very young age of 14 years old. And the only time that he
2 has stopped his criminal activity and actually been in
3 compliance with what's required is when he was incarcerated,
4 starting in 2017 and a sentence of five years.

5 I do note that he is on Level 3 release from the
6 state on the charge in December 7, 2020, where he was with --
7 supposed to be on 24-hour home confinement. I heard a
8 proffer from the Government that he did not comply with that,
9 and the next day he went to Virginia and thereafter was in
10 Atlanta.

11 But I do note that there is a report that he has
12 violated the monitoring and so scheduled to be heard, it
13 says, on January 28, 2021. I am not sure whether that went
14 forward.

15 Ms. Austin, I presume that that was adjourned and
16 it's on for a new date in.

17 THE PRETRIAL SERVICES OFFICER: Correct, Judge. It
18 was adjourned, and it has no date at this time.

19 THE COURT: Okay.

20 THE PRETRIAL SERVICES OFFICER: I don't know why.
21 But I -- that is what they told me.

22 THE COURT: Well, I hear the state court is
23 probably booked up like we are.

24 And very much appreciate Mr. Sharma advising, I
25 guess, his client through his oral argument the seriousness

1 of the charges.

2 But I don't think that he being in federal court is
3 going to have any effect on his continued compliance with
4 Pretrial Services supervision now that he's in federal court.
5 I have no confidence that that's going to happen. I believe
6 that the Government has shown by a preponderance of the
7 evidence, therefore, that no condition or combination of
8 conditions of release will reasonably assure the defendant's
9 appearance, as required.

10 And I was interested in Mr. Sharma's argument about
11 the Himler case -- Himler, I think you said it was -- and I
12 was looking at it during the time that he was arguing. But
13 to the extent that the secondary issue of the safety of the
14 community comes into play, I do find by clear and convincing
15 evidence is that there's no condition or combination of
16 conditions of release that will reasonably assure the
17 defendant -- or the safety of the persons in the community.
18 The list of -- the list of offenses in the criminal complaint
19 are lengthy. They are -- they happen one after the other.
20 And I did have a conversation with Mr. Sharma about the
21 inherent danger in burglary that could lead to very
22 unfortunate circumstances. And I will take a look at the
23 Himler case, and I'll be prepared to discuss it further with
24 you, Mr. Sharma, on the next conference that we have.

25 But I find that both -- both reasons warrant Mr. --

1 or the defendant's continued detention.

2 So I will continue to remand him with the United
3 States Marshal Service.

4 Okay.

5 Ms. Latzer, anything further?

6 MS. LATZER: No, Judge. Thank you.

7 THE COURT: Mr. Sharma?

8 MR. SHARMA: No, Your Honor. Thank you.

9 THE COURT: Okay. We're off. Thank you.

10 (Conclusion of proceedings)

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Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 27 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

s/ *Sara L. Kern*

12th of March, 2021

Signature of Approved Transcriber

Date

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